AUG 14 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1956

No. 318

ESTATE OF ARTHUR SWEET, DECEASED, TRACY-COLLINS TRUST, ADMINISTRATOR,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

MAURICE J. HINDIN,
6399 Wilshire Boulevard,
Los Angeles 48, California,
Attorney for Petitioner.

The Myers Legal Press, Los Angeles. Phone VAndike 9007.

SUBJECT INDEX

PAGE

Jurisdiction 1

Citations to opinions below 2

Statutes and regulations involved 2

Statement of the case 2

Questions presented 5

Reasons for granting certiorari 6

A. The Court of Appeals in this case has rendered a decision in conflict with the decisions of Courts of Appeals of other circuits on the same questions of law 6

B. The Court of Appeals has decided an important question of federal law which has not been but should be settled by this court 11

C. The Court of Appeals had decided a federal question in a way in conflict with applicable decisions of this court 12

D. The questions involved are of general national importance in that they involve questions affecting the orderly administration of trusts and estates generally with special reference to the inter-relationship between State Courts' administration of trust and the Tax Court's determination of taxability of estates and trusts and the Tax Court's determination of taxability of estates and trusts under provisions of the Internal Revenue Code 12

Conclusion 13

Appendix:

Petition to review the decision on the Tax Court of the United States ..... App. p. 1

TABLE OF AUTHORITIES CITED

CASES

PAGE

Blair v. United States, 300 U. S. 5, 57 S. Ct. 330, 81 L. Ed. 465 ..... 7, 8, 9, 11, 12

Bullard v. Commissioner, 90 F. 2d 144 7

Commissioner v. Crawford's Estate, 139 F. 2d 616 7

Eisenmenger v. Commissioner, 145 F. 2d 103 7

Fidelity Union Trust Company v. Kelly, 102 F. 2d 333 10

Freuler v. Commissioner, 291 U. S. 35, 78 L. Ed. 634, 54 S. Ct. 308 ..... 8, 11

Gallagher v. Smith, 223 F. 2d 218 ..... 7, 8

Helvering v. Stuart, 317 U. S. 154, 87 L. Ed. 154, 63 S. Ct. 140 ..... 8, 11

Hulburd v. Commissioner, 296 U. S. 300, 80 L. Ed. 242, 56 S. Ct. 197 ..... 9, 11, 12, 13

Lucas v. Fidelity and Columbia Trust Company, 89 F. 2d 945 10

MacManus v. Commissioner, 131 F. 2d 670 10

Morgan v. Commissioner, 309 U. S. 78, 84 L. Ed. 585, 60 S. Ct. 424 ..... 8, 11, 12

Sharp v. Commissioner, 107 F. 2d 13, cert. den. 309 U. S. 665, 60 S. Ct. 591, 84 L. Ed. 1013 ..... 7, 12

Union Trust Company of Butler v. Commissioner, 84 F. 2d 386 10

United States Trust Co. of New York v. Commissioner, 296 U. S. 481, 80 L. Ed. 340, 56 S. Ct. 329 10

RULE

Rules of the United States Supreme Court, Rule 19, Subsec. 1b .. 2

STATUTES

Internal Revenue Code of 1939, Sec. 812(e)(1) (A, E, F, H) 2

Revenue Act of 1948, Sec. 361 (62 Stat. of 1948, Chap. 168, p. 110) 2

United States Code, Title 28, Sec. 1254(1) 2

IN THE

Supreme Court of the United States

October Term, 1956

No.....

ESTATE OF ARTHUR SWEET, DECEASED, TRACY-COLLINS TRUST, ADMINISTRATOR,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

To the Honorable, the Chief Justice, and to the Associate Justices of the Supreme Court of the United States:

The Petitioner herein respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit affirming a decision of the Tax Court of the United States.

Jurisdiction.

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on the 26th day of May, 1956. Thereafter, the said court on the 28th day of June, 1956, made and entered its Order denying Petitioner's Petition for Rehearing. The jurisdiction of this court is invoked under provisions of 28 United States Code,

Section 1254, Subsection 1, and pursuant to Rule 19, Subsection 1b of the Rules of the Supreme Court of the United States, adopted April 12, 1954.

Citations to Opinions Below.

The Findings, Opinion and Decision of the Tax Court is reported in 24 T. C. 488, and is set forth in the Transcript of Record at pages 29 to 40, inclusive.

The Opinion of the Court of Appeals will be reported in 233 F. 2d ..... and for the convenience of the court is printed in Appendix A attached hereto.

Statutes and Regulations Involved.

The statutes and regulations involved relate to Section 812(e)(1)(A, F, and H) of the Internal Revenue Code of 1939, as amended by Section 361 of the Revenue Act of 1948, Ch. 168, 62 Stat. 110.

Statement of the Case.

The nature of the controversy in the above-captioned matter before the Tax Court of the United States and before the United States Court of Appeals for the Tenth Circuit related to the Petitioner's claim of marital deduction provided for in Section 812(e)(1)(A, E, F, and H), respectively, of the Internal Revenue Code of 1939.

On June 6, 1947, the Decedent, Arthur Sweet, made and executed a trust agreement in writing whereby the Decedent created a revocable trust and designated the Tracy-Collins Trust Company as Trustee [Tr. of Record, p. 19]. Thereafter, on July 27, 1948, the Decedent and the Tracy-Collins Trust Company executed a supplemental trust agreement [Tr. of Record, p. 24].

The crucial question to be determined by the current litigation was whether one or two trusts were created by the supplemental trust agreement. In the pending controversy, Petitioner has contended that the legal effect of the supplemental trust agreement was to create two separate trusts over one of which trusts the Decedent's wife who survived him had power of appointment over the entire corpus while over the other trust she had no power of appointment. Respondent has contended throughout this litigation that only one trust was created by the supplemental trust agreement. Respondent in this controversy disallowed the claim of marital deduction upon the grounds that the surviving wife's power of appointment did not extend to the "entire corpus" of the single trust. It has been conceded throughout the litigation by the Respondent and recognized by the Tax Court and the United States Court of Appeals that if two separate trusts were created as Petitioner contended, then one of the two trusts, to-wit, the one over which the Decedent's wife had power of appointment, would properly qualify for the marital deduction. Likewise, Petitioner has conceded throughout the litigation and the Tax Court and the United States Court of Appeals have recognized that if only one trust was created, then Petitioner was not entitled to the marital deduction for the reason that the surviving wife's power of appointment did not extend to the "entire corpus" of such trust.

In the course of administration of the estate of the Decedent, the question of whether a single or two trusts were created first arose. The Tracy-Collins Trust Company, Petitioner herein, thereupon filed a Complaint in the District Court of the Third Judicial District, Salt Lake County, State of Utah, which court had sole and

exclusive jurisdiction over all matters relating to the interpretation and administration of the trust and estate of the Decedent and prayed for a judgment interpreting the trust instruments and adjudicating the question of all property rights and interests therein. The said District Court upon hearing and after notice to all interested parties in the estate and trust of the Decedent judicially determined that the aforesaid trust and supplement thereto constituted and created two separate trusts. That court found that over one of these trusts the Decedent's widow had power of appointment and over the other trust she had no power of appointment [Tr. of Record, pp. 12-17]. The complaint in the State Court named as defendants the widow and the surviving children of the Decedent. Appearances were filed by the widow and the children, but the matter was not contested by them. The Judgment of the State Court became final. No appeal had been taken from the said Judgment, and the Judgment has never been revoked, vacated or rescinded and remains in full force and effect to this date. The State Court Judgment is a final judgment binding upon the Petitioner herein, the surviving widow, and the children of the Decedent.

Notwithstanding the State Court's determination of the status of the trusts and the property rights of the Petitioner, the surviving spouse and the children of the Decedent, and the determination of that court that two separate trusts were created, the Respondent herein determined that but one trust was created. Such determination by the Respondent resulted in the disallowance of the marital deduction claim and the assessment of an estate tax deficiency.

Thereafter, Petitioner herein filed a Petition for Redetermination of the deficiency in the Tax Court of the United States [Tr. of Record, p. 3]. Trial was had before the Tax Court (a single judge hearing the matter) sitting in Salt Lake City on October 13, 1953. Upon conclusion of the trial, the Judge announced from the bench judgment in favor of the Petitioner and made oral findings that two separate trusts were created, and that the trust over which the widow was granted power of appointment qualified for the marital deduction [Tr. of Record, Document 7, pp. 27-29]. Thereafter, on the 24th day of June, 1955 (approximately 20 months later), the Tax Court (also by the same single judge) made and filed written Findings of Fact which are reproduced in the Transcript of the Record before this Court [Tr. of Record, Document 8, pp. 29-35]. The Tax Court, however, at this time changed its announced judgment and rendered judgment against the Petitioner. The Opinion and Judgment of the Tax Court is likewise reproduced in the Transcript of the Record [Document 8, pp. 35-40]. The Findings of Fact made by the Tax Court are not challenged and are adequately supported by the evidence. The Court of Appeals thereafter on Petition to Review the Decision of the Tax Court affirmed the Tax Court's judgment.

Questions Presented.

1. Where a state court renders a judgment interpreting trust instruments which judgment becomes final and binding on all parties thereto, is such judgment rendered ineffective for Federal tax purposes because the state court action was not contested by the beneficiaries?

2. What rules of interpretation should be uniformly followed in determination of whether one or two trusts are created by written trust instruments for Federal tax purposes?

Reasons for Granting Certiorari.

Petitioner herein respectfully urges the following reasons why certiorari should be granted in this case:

A. The Court of Appeals in this case has rendered a decision in conflict with the decisions of Courts of Appeals of other circuits on the same questions of law.

B. The Court of Appeals has decided an important question of Federal law which has not been but should be settled by this court.

C. The Court of Appeals had decided a Federal question in a way in conflict with applicable decisions of this court.

D. The questions involved are of general national importance in that they involve questions affecting the orderly administration of trusts and estates generally with special reference to the interrelationship between state courts' administration of trusts and the Tax Court's determination of taxability of estates and trusts and the Tax Court's determination of taxability of estates and trusts under provisions of the Internal Revenue Code.

Applicability of each of the aforementioned reasons to the instant case are set forth immediately hereafter under their appropriate subheadings.

A. The Court of Appeals in This Case Has Rendered a Decision in Conflict With the Decisions of Courts of Appeals of Other Circuits on the Same Questions of Law.

Two issues of law were presented to the Court of Appeals in this case. The first issue was whether or not the Judgment of the Utah State Court was an effective determination of the status of the trust estates and of the

property rights of the parties. The second issue was whether or not as a matter of law one or two trusts were created irrespective of the state court's judgment. As to each of these issues, the judgment of the Court of Appeals in this case is in conflict with judgments of Courts of Appeals of other circuits.

With reference to the first issue which was presented to the Court of Appeals in this case, namely, whether or not the Judgment of the state court was an effective determination of the status of the trusts and property rights of the parties, this question is the subject of a conflict of opinion between Courts of Appeals of several circuits. The Court of Appeals in the instant case held that because the state court action was not contested by the surviving spouse or the children of the decedent and was thus non-adversary in nature, the judgment of the state court was entirely ineffectual in this proceeding. This ground for rejection of the effectiveness of the state court judgment is directly in conflict with the opinion expressed by the Court of Appeals for the Third Circuit in the recent case of *Gallagher v. Smith*, 223 F. 2d 218. In analyzing the reported cases on the subject, that court noted that in the following cited cases no true adversary proceedings took place in the state court yet the judgments of state courts were given conclusive effect for tax purposes. These cases include *Blair v. United States*, 300 U. S. 5, 57 Sup. Ct. 330, 81 L. Ed. 465; *Sharp v. Commissioner*, 107 F. 2d 13, wherein certiorari was denied in 309 U. S. 665, 60 Sup. Ct. 591, 84 L. Ed. 1013; *Commissioner v. Crawford's Estate*, 139 F. 2d 616; *Bullard v. Commissioner*, 90 F. 2d 144; *Eisenmenger v. Commissioner*, 145 F. 2d 103. The Court of Appeals in the *Gallagher v. Smith* case, *supra*, held that the non-adversary nature of the proceeding is not, therefore, controlling. Yet in this case the

non-adversary nature of the proceeding was assigned as the reason for disregarding the state court's judgment. As was pointed out in the *Gallagher* case, the basic reason for holding the judgment of the state court to be conclusive is not to arbitrarily bind the United States taxing authority, but because of the fact that all parties to the state court action are themselves bound by the judgment, thus finally establishing their property and legal rights in the trusts. The court here took an opposite view. Whether or not the non-adversary nature of a state court proceeding will render ineffective a binding state court determination of trust is squarely in conflict among circuit courts of appeals for different circuits. To our knowledge, this court has not yet squarely passed upon this issue.

The Supreme Court has established several broad principals of law applicable to the present case. This court has held that as to the interpretation and administration of trusts, a judgment of the state court fixes and determines the property rights of the parties, and, as such, its judgments are binding upon the Commissioner of Internal Revenue and upon the Tax Court. (*Freuler v. Commissioner,* 291 U. S. 35, 78 L. Ed. 634, 54 Sup. Ct. 308; *Blair v. Commissioner,* 300 U. S. 5, 81 L. Ed. 465, 57 Sup. Ct. 330; *Helvering v. Stuart,* 317 U. S. 154, 87 L. Ed. 154, 63 Sup. Ct. 140.) This court also has held that state law creates legal interests and rights while the Federal Revenue Acts designate what interests or rights so created under state law shall be taxed. (*Morgan v. Commissioner,* 309 U. S. 78, 84 L. Ed. 585, 60 Sup. Ct. 424.) Likewise, this court has held that matters relating to powers, rights, and duties of trustees in connection with the interpretation, construction and validity of trusts are likewise peculiarly matters within the jurisdiction of the

State Courts. (*Hulburd v. Commissioner*, 296 U. S. 300, 80 L. Ed. 242, 56 Sup. Ct. 197.)

The seriousness of the problem created by the conflict of authorities among Courts of Appeals from the several circuits is sharply focused by the situation in this case. Here, a corporate trustee is confronted with a question of interpretation and administration of a trust. Serious administrative problems, the trustee's liability, as well as tax consequences depend upon its determination. It goes into the state court, the only forum open to it, and seeks a determination of its rights. Such procedure is expressly approved in the case of *Blair v. Commissioner, supra*. If the beneficiaries over whom the Trustee has no control contest the action, then according to the Court of Appeal's holding in this case, the state court's determination is apparently binding on the taxing authorities without question. But if there is no adversary action taken by the beneficiary, a conflict appears in the decisions of the Courts of Appeals as to whether or not the state court's determination is effective. This question has not been passed upon by the Supreme Court, and the conflict between Courts of Appeals leaves the question undecided.

In this case the Petitioner trustee acted in good faith to protect itself from conflicting interpretations as to the status of the trusts it was charged with administering. The statements in the Court of Appeal's Opinion that the state court action was instituted "for the sole and single purpose of circumventing the contention of the commissioner" and that the state court decree "was obtained by collusion for the purpose of maintaining the claim for marital deduction" are not supported by any evidence whatsoever, nor by anything else in the record, nor was any finding of fact made by the Tax Court with

reference to such asserted "collusive" conduct. [Tr. of Record, pp. 29-40.] It injects an issue of bad faith never even urged by the Respondent nor found to exist by the Tax Court nor supported by any evidence whatsoever. The true issue upon which there is, however, a serious and unreconcilable conflict is whether or not the absence of an adversary will destroy the effectiveness of a State court's judgment. Only this tribunal can settle this conflict.

As to the second issue, namely, what rules of interpretation should be applied, in similar factual situations the Courts of Appeals for the Third Circuit and the Sixth Circuit each determined that multiple trusts rather than a single trust were created by similar trust instruments. (*Union Trust Company of Butler v. Commissioner of Internal Revenue*, 84 F. 2d 386 (3rd Cir.); *Lucas v. Fidelity and Columbia Trust Company*, 89 F. 2d 945 (6th Cir.); *Fidelity Union Trust Company v. Kelly* 102 F. 2d 333 (3rd Cir.); *MacManus v. Commissioner*, 131 F. 2d 670 (6th Cir.); *United States Trust Co. of New York v. Commissioner*, 296 U. S. 481, 80 L. Ed. 340, 56 Sup. Ct. 329.) No uniformity as to rules of interpretation are followed by the different Courts of Appeal. The result reached by the courts below in this case are harsh and go squarely contrary to the clear intent of the Trustor in seeking to qualify his estate for the marital deduction authorized by law [Tr. of Record p. 39]. It thus appears that the very rules of interpretation upon which judicial determination of whether single or multiple trusts have been created in a given situation are the subject of differing standards and rules by different Courts of Appeals. Only this court can lay down rules of interpretation to be followed uniformly on this important subject.

B. The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been but Should Be Settled by This Court.

The rule has been well established by the Supreme Court in the cases of *Freuler v. Commissioner, supra; Blair v. Commissioner, supra,* and *Helvering v. Stuart, supra,* that Federal Courts have no probate jurisdiction, and that state courts are under our system of jurisprudence solely vested with jurisdiction to determine the rights, duties, and obligations of parties in estates and trusts. (See *Hulburd v. Commissioner, supra.*)

This court has held that state law creates property rights which when so created become taxable or not under Federal statutes. (*Morgan v. Commissioner, supra.*) The Court of Appeals in this case placed a limitation on the rules heretofore announced by this Court, which limitation has not been heretofore sanctioned by this Court. It has stated that if the state court action is non-adversary in nature, then no property rights are effectively determined by the state court's decrees. This question has not been heretofore settled by this court. Carried to its logical conclusion, the Court of Appeals' decision holds in effect that a trustee is helpless to settle with finality its administrative problems or property rights in trusts for all purposes unless a beneficiary contests the action before the state courts. It is an important question which we respectfully submit has national implications, and in order to settle the same for all similarly situated trustees throughout the country as well as for the lower courts, this court should hear this matter and settle the problem.

C. The Court of Appeals Had Decided a Federal Question in a Way in Conflict With Applicable Decisions of This Court.

As was pointed out above, this court has held that State Courts properly are the forums to regulate administration of wills and trusts. (*Hulburd v. Commissioner, supra.*)

This court in the case of *Sharp v. Commissioner, supra,* denied certiorari where a Court of Appeals upheld a non-adversary state court judgment as effective for tax purpurposes. Likewise, in *Blair v. Commissioner, supra,* this court upheld a state court judgment also non-adversary in nature as binding upon the Federal taxing authorities. This court has laid down the rule in the case of *Morgan v. Commissioner, supra,* that state courts' determination of property rights under wills and trusts will be followed in Federal taxation matters. The Court of Appeals in this case seems to have rendered a decision here in conflict with the applicable decisions of this court. If the decision of the Court of Appeals is not in actual conflict with this court's decisions, its point of distinction is so obscure as to warrant clarification by this court by the granting of certiorari in this case.

D. The Questions Involved Are of General National Importance in That They Involve Questions Affecting the Orderly Administration of Trusts and Estates Generally With Special Reference to the Inter-relationship Between State Courts' Administration of Trust and the Tax Court's Determination of Taxability of Estates and Trusts and the Tax Court's Determination of Taxability of Estates and Trusts Under Provisions of the Internal Revenue Code.

Reference is made to the foregoing reasons for granting of the Writ for sake of brevity and to avoid redundancy.

Use of trusts are widespread throughout our nation. State courts must administer them under our system of jurisprudence. (See *Hulburd v. Commissioner, supra.*) Uniformity as to applicability of the State court judgments to Federal tax questions are not only desirable but essential to avoid a multiplicity of conflicting rules being followed by the various Courts of Appeals. The instant case adds to the confusion already existing as to the proper relationship of state and federal court judgments. Granting of certiorari is desirable not only to correct a harsh result in this case which twarted the Testator's clear intent to avail himself of the marital deduction [see Tax Court Opinion at p. 39 of the Tr. of Record] but also for the broader purpose of charting uniform rules for the administration of trusts by trustees and uniform applicability of laws by the Tax Court and Courts of Appeals.

Conclusion.

It is respectfully submitted that the Writ of Certiorari should be granted in this action.

Respectfully submitted,

MAURICE J. HINDIN,

Attorney for Petitioner.